

SUPREME COURT OF PENNSYLVANIA

Commonwealth v. Ogrod

576 Pa. 412 (2003) (Pa. 2003) · Decided December 30, 2003

SUMMARY

The Supreme Court of Pennsylvania reviewed Walter Ogrod’s convictions for first-degree murder and attempted involuntary deviate sexual intercourse, along with his death sentence, following a second trial. The opinion discusses the mistrial declared during the first trial, Ogrod’s double-jeopardy challenge to retrial, the admission of his custodial statement, and the evidence presented concerning the 1988 killing of Barbara Jean Horn.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Justice Newman; Chief Justice Zappala; Justice Cappy; Justice Castille; Justice Nigro; Justice Saylor; Justice Eakin
JURISDICTION	Pennsylvania
DECIDED	December 30, 2003
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from convictions for first-degree murder and attempted involuntary deviate sexual intercourse and the imposition of the death penalty following a second trial after the first trial ended in a mistrial.
STANDARD OF REVIEW	The court independently reviewed the sufficiency of the evidence in the capital case, viewing the evidence and reasonable inferences in the light most favorable to the Commonwealth as verdict-winner. Suppression rulings and evidentiary matters were reviewed for abuse of discretion or under the totality-of-the-circumstances voluntariness standard, as applicable. Ineffective-assistance claims required proof of arguable merit, lack of a reasonable strategic basis, and resulting prejudice.
PRECEDENTIAL VALUE	precedential
PARTIES	Walter Ogrod v. Commonwealth of Pennsylvania

TOPICS

- double jeopardy
- criminal procedure
- sixth amendment
- mens rea
- sentencing

PRACTICE AREAS

criminal law

criminal procedure

capital punishment

post-conviction and habeas corpus

QUESTIONS PRESENTED

1. Whether retrial after the first jury failed to reach a unanimous verdict violated the Double Jeopardy Clauses of the United States and Pennsylvania Constitutions.
2. Whether the evidence was sufficient to sustain convictions for first-degree murder and attempted involuntary deviate sexual intercourse.
3. Whether Ogrod's statement to police was involuntary or otherwise inadmissible.
4. Whether the suppression court improperly considered the content of the confession and permitted cross-examination concerning defense witness bias.
5. Whether the Commonwealth violated discovery obligations by failing to provide original police activity sheets.
6. Whether prosecutorial comments, evidence concerning Ogrod's alleged admissions, the use of an alias by a jailhouse witness, photographs, and other trial matters required a new trial.
7. Whether trial counsel was ineffective for failing to object, call witnesses, present character evidence, or move to suppress the jailhouse informant's testimony.
8. Whether the penalty phase involved improper victim-impact evidence, improper consideration of the victim's age, or improper prosecutorial argument.
9. Whether the death sentence was supported by the aggravating and mitigating circumstances and was proportionate.

HOLDINGS

1. Retrial did not violate the Double Jeopardy Clauses because the jury repeatedly and expressly reported that it could not reach a unanimous verdict, making a mistrial manifestly necessary; Ogrod also could not object to the mistrial after his attorney had requested one the preceding day.
2. The Superior Court's prior ruling on interlocutory review did not prevent the Pennsylvania Supreme Court from considering the double-jeopardy issue on appeal from the final judgment.
3. Ogrod failed to establish ineffective assistance because the challenged underlying claims lacked arguable merit, counsel had reasonable strategic bases for the challenged decisions, or Ogrod failed to show prejudice.
4. The evidence was sufficient to sustain the convictions for attempted involuntary deviate sexual intercourse and first-degree murder.
5. The trial court properly admitted Ogrod's statement because, under the totality of the circumstances, he knowingly waived his Miranda rights and voluntarily provided the statement.
6. The admission of Ogrod's voluntary statements to a fellow inmate did not violate the Sixth Amendment because the record did not show that the Commonwealth arranged for the informant to deliberately elicit the statements or promised a benefit in exchange for them.

7. Although the prosecutor improperly referred to child pornography after the trial court had directed that such references not be made, the comments did not have the unavoidable effect of preventing the jury from fairly weighing the evidence. Limited penalty-phase comments about Ogrod's lack of remorse and the harm to the victim's family likewise did not require a new sentencing hearing.

KEY QUOTATIONS

“The question of voluntariness is not whether the defendant would have confessed without interrogation, but whether the interrogation was so manipulative or coercive that it deprived the defendant of his ability to make a free and unconstrained decision to confess.” (at 320)

FACTUAL BACKGROUND

Four-year-old Barbara Jean Horn was sexually assaulted and killed on July 12, 1988, and her body was placed in a television box and left near garbage cans. The Commonwealth presented eyewitness evidence concerning a man carrying the box, forensic evidence that the child died from repeated blows to the head, Ogrod's detailed post-Miranda confession to police, and testimony from a fellow inmate concerning additional admissions. Ogrod presented evidence suggesting that police had previously suspected another man and challenged the reliability and voluntariness of the statements and identification evidence.

PROCEDURAL HISTORY

The first trial ended in a mistrial after the jury repeatedly reported that it could not reach a unanimous verdict. The trial court denied Ogrod's motion to bar retrial, the Superior Court affirmed, the Pennsylvania Supreme Court denied allowance of appeal, the United States Supreme Court denied certiorari, and the United States District Court for the Eastern District of Pennsylvania denied habeas relief. At the second trial, Ogrod was convicted and sentenced to death. The trial court denied post-sentence motions after an evidentiary hearing on ineffective-assistance claims, and Ogrod appealed to the Pennsylvania Supreme Court.

DISPOSITION

affirmed

CASES CITED

- Commonwealth v. Diehl, 532 Pa. 214, 615 A.2d 690 (1992)
- Green v. United States, 355 U.S. 184 (1957)
- Commonwealth v. Davis, 546 Pa. 158, 683 A.2d 873 (1996) (per curiam)
- Commonwealth v. Starr, 541 Pa. 564, 664 A.2d 1326 (1995)
- Commonwealth v. Grant, 572 Pa. 48, 813 A.2d 726 (2002)
- Commonwealth v. Bomar, 573 Pa. 426, 826 A.2d 831 (2003)
- Commonwealth v. Nester, 551 Pa. 157, 709 A.2d 879 (1998)
- Commonwealth v. Franciscus, 551 Pa. 376, 710 A.2d 1112 (1998)
- Kuhlmann v. Wilson, 477 U.S. 436 (1986)

- Commonwealth v. Wesley, 562 Pa. 7, 753 A.2d 204 (2000)
- Commonwealth v. Jones, 546 Pa. 161, 683 A.2d 1181 (1996)
- Commonwealth v. Ligons, 565 Pa. 417, 773 A.2d 1231 (2001)
- Commonwealth v. Travaglia, 502 Pa. 474, 467 A.2d 288 (1983)
- Commonwealth v. Kloiber, 378 Pa. 412, 106 A.2d 820 (1954)
- Commonwealth v. Auker, 545 Pa. 521, 681 A.2d 1305 (1996)

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